

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

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| <i>In Re:</i> | Lauderdale Homes 2001 L.P.                           | ) |                   |
|               | District 2, Map 95I, Group E, Parcels 15 through 125 | ) |                   |
|               | <i>Tax year 2005</i>                                 | ) |                   |
|               | District 2, Map 95I, Group E, Control Map 95I,       | ) | Lauderdale County |
|               | Parcel 1.00, Special Interest 000                    | ) |                   |
|               | <i>Tax year 2006</i>                                 | ) |                   |

INITIAL DECISION AND ORDER

Statement of the Case

These are appeals pursuant to Tenn. Code Ann. section 67-5-1412(a)(1) from decisions of the Lauderdale County Board of Equalization ("county board") regarding the subclassification and valuation of the subject property. In tax year 2005, the 110 parcels in dispute were subclassified as "residential property" and valued at amounts between \$63,400 and \$66,300. In tax year 2006, the Lauderdale County Assessor of Property ("Assessor") consolidated all of these parcels as Parcel No. 2-95I-E-95I-1.00 SI 000 and reclassified it as "industrial and commercial property."<sup>1</sup> The Lauderdale County Board of Equalization affirmed this change of subclassification as well as the Assessor's total valuation of \$6,473,100.

On December 15, 2005, the State Division of Property Assessments (DPA) filed a petition for intervention. The undersigned administrative judge granted that petition on May 15, 2006.

The undersigned administrative judge conducted a hearing of this matter on July 24, 2007 in Jackson. The appellant, Lauderdale Homes 2001, LP ("Lauderdale Homes"), was represented by R. Porter Feild, Esq., of Burch, Porter & Johnson, PLLC (Memphis). Robert T. Lee, Esq., General Counsel to the Comptroller of the Treasury, appeared on behalf of the intervening DPA and the Assessor.

On August 9, 2007, the parties stipulated in writing that the subject property should be valued at \$5,400,000 for both tax years 2005 and 2006.

Findings of Fact and Conclusions of Law

At issue in this proceeding is the subclassification of the 110 rental units in a low-income housing project ("Autumn Hills") located on a 27.53-acre site in the city of Ripley. Construction of this project was partially financed by proceeds from the assignment of federal income tax credits (LIHTCs) awarded to the developer Lauderdale Homes under Section 42 of the Internal

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<sup>1</sup>Also included in this consolidation was the lot (previously identified as Parcel No. 2-95I-E-125.00) on which the property manager's office is situated. The commercial subclassification of that portion of the subject property in tax years 2005 and 2006 is not disputed.



Revenue Code.<sup>2</sup> Unlike most properties of this kind, Autumn Hills is comprised of detached single-family homes that were built on contiguous lots in accordance with a duly recorded subdivision plat. Exhibit 1. These homes, which required separate building permits and certificates of occupancy, were completed and rented to qualifying tenants in stages. Exhibit 2.

Each Autumn Hills home has its own driveway, mailbox, and utility connection. The tenants are responsible for routine maintenance of their units, while the developer maintains the private roads in what property manager Sarah Glover described as a “typical neighborhood.” The applicable land use restrictive covenants prohibit Lauderdale Homes from selling any individual unit for at least ten years from the date of first occupancy thereof.

Lauderdale Homes acquired the subject land by warranty deed dated November 27, 2001.<sup>3</sup> The applicable land use restrictive covenants prohibit Lauderdale Homes from selling any individual unit for at least ten years from the date of first occupancy thereof. Veteran residential developer Harold E. Buehler, Sr., general partner of Lauderdale Homes, testified that he had not undertaken a similar project in the state of Tennessee.

As explained by Assessor Jerry Buckner, who took office in 2005, the lots shown on the plat of Autumn Hills were originally assigned separate parcel identification numbers on the assumption that they were freely transferable. Subsequently, on the advice of DPA, he elected to treat Autumn Hills as one parcel of commercial property for assessment purposes. Among the factors which influenced this action were the common ownership and property management; adjoining locations; and business purpose.

As defined in Tenn. Code Ann. section 67-5-501(9)(A):

“Real property” includes lands, tenements, hereditaments, structures, improvements, movable property assessable under section 67-5-802, or machinery and equipment affixed to realty, except as otherwise provided for in this section, **and all rights thereto and interests therein, equitable as well as legal...**[Emphasis added.]

For tax purposes, there are four subclassifications of real property in this state: (1) public utility property (assessed at 55% of its value); industrial and commercial property (assessed at 40% of its value); residential property (assessed at 25% of its value); and farm property (also assessed at 25% of its value). Article II, section 28 of the Tennessee Constitution further provides – somewhat awkwardly – that “residential property containing two (2) or more rental units is hereby defined as industrial and commercial property.” Consistent with this provision, the legislature has enacted the following definitions:

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<sup>2</sup>Upon the developer’s application, the Tennessee Housing Development Agency (the state administrator of the LIHTC program) allocated a total of \$5,000,000 in LIHTCs. Subject to compliance with prescribed household income and rental rate restrictions for the duration of the commitment period (in the case of Autumn Hills, 20 years), these tax credits may be utilized in equal amounts over a ten-year period.

<sup>3</sup>The excess land is currently identified as Parcel No. 2-95I-E-1.00 SI 001.



- (4) "Industrial and commercial property" includes all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club (whether public or private), nonexempt lodge, business, or similar purpose, whether conducted for profit or not. All real property which is used, or held for use, for dwelling purposes, which contains two (2) or more rental units is hereby defined and shall be classified as "industrial and commercial property";
- (10) "Residential property" includes all real property which is used, or held for use, for dwelling purposes and which contains not more than one (1) rental unit. All real property which is used, or held for use, for dwelling purposes but which contains two (2) or more rental units is hereby defined and shall be classified as "industrial and commercial property";

Tenn. Code Ann. section 67-5-501.

In a remarkably detailed though unpublished opinion which dealt mainly with an ongoing controversy over LIHTC appraisal methodology, the Tennessee Court of Appeals upheld the reclassification as commercial property of a very similar "Section 42" development in Marshall County consisting of 44 freestanding homes ("Acorn Hills"). Spring Hill, L.P. v. State Board of Equalization, 2003 WL 23099679 (Tenn. Ct. App. 2003). Counsel for the appellant earnestly contends that this decision was based on a misapplication of Castlewood, Inc. v. Anderson County, 969 S.W.2d 908 (Tenn. 1998). The Castlewood case involved a multi-building condominium project in which most of the units were held by the developer for rental. Rejecting the argument that the classification of those units as industrial and commercial property was inconsistent with the Horizontal Property Act,<sup>4</sup> the Supreme Court of Tennessee declared that:

There is no mistaking the meaning of the constitutional provision or the statute. The buildings owned by Castlewood contain two or more rental units held for dwelling purposes. Neither the constitution nor the statute suggests that condominiums should be classified for assessment purposes differently than other residential property.

969 S.W.2d 908 at 909.

The Castlewood Court also found no merit in the taxpayer's "equal protection" claim, concluding that the more favorable classification of owner-occupied residences sustained in Snow v. City of Memphis, 527 S.W.2d 55 (Tenn. 1975) "does not extend to the owner of the 80 condominium rental units which are, to the owner-taxpayer, income producing property."<sup>5</sup> 969 S.W.2d at 910.

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<sup>4</sup>The pertinent provision of the cited Act states that taxes on a condominium project "shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole." Tenn. Code Ann. section 66-27-120(a).

<sup>5</sup>Ironically, the Court in Snow had determined that "[t]he cost of land on the one hand and the savings to be effected in the construction and operation of multi-unit apartments render it inconceivable that any investor would be in the business of renting single-family residences." 527 S.W.2d at 66. The appellant, of course, is engaged in that very business at Autumn Hills – albeit with substantial assistance from the federal government and in anticipation of a "residential" subclassification.



In the appellant's view, the Spring Hill court misguidedly focused on the *purpose* for which Acorn Hills was held: i.e., to generate income. "The purpose for which a property is used," Mr. Feild asserted, "is irrelevant." *Legal Brief of Taxpayer*, p. 9. He observed that, no less than the developer of Autumn Hills, an owner of scattered rental houses is motivated by potential profit; nevertheless, such houses still enjoy a residential classification "unless they are conjoined or more than one rental unit is contained in one parcel of real property." *Id.* at p. 10. Further, this status is not negated by the landlord's utilization of a common business address (for the mailing of tax bills) or financing arrangement (under one deed of trust). Exhibits 3—6.

To be sure, the subject property does differ from the condominium project considered in Castlewood in that every building at Autumn Hills contains just one rental unit. Yet, contrary to the appellant's implication, an assessor is not necessarily obliged to create a distinct parcel identification number for each separately-numbered lot on a recorded plat. As Mr. Lee pointed out, the designation of a "parcel" in a mass appraisal system serves merely to identify real property for assessment purposes. In this regard, it should be emphasized that:

*Real property* is defined as the sum of the tangible and intangible rights in land and improvements. Real property refers to the interest, benefits, and rights inherent in the ownership of real estate....*Real estate*, on the other hand, is the physical land and everything permanently attached to it.

International Association of Assessing Officers, *Property Assessment Valuation* (2<sup>nd</sup> ed. 1996), p. 9.

The taxpayer's attorney posits that:

...[N]owhere in the definition of real property does it anticipate combining a real property with surrounding property. Each and every identifying factor of the definition of real property contains a specific provision of attachment to or benefit of the property at issue. The definition of real property does not include property nearby or property or property used for a similar purpose in the same local [sic]. *Legal Brief of Taxpayer*, pp. 6—7.

But in seemingly equating real *property* with real *estate*, Mr. Feild begs the question of how the real property to be appraised here should be delineated. In the opinion of the administrative judge, the "bundle of rights" associated with ownership of Autumn Hills cannot appropriately be valued other than by viewing this development as a whole. After all, one of the rights inherent in a fee simple interest in property is the right to sell it. *Property Assessment Valuation, supra*, p. 10. Lauderdale Homes relinquished the right to sell the subject houses individually in exchange for financial benefits which are contingent on operation of the entire project in compliance with governmental regulations. Those benefits accrued to Lauderdale Homes as a result of its submission of *one* application which covered *all* of the contiguous lots and buildings in question. Realistically, the present worth of the future benefits of ownership of Autumn Hills can only be estimated in the context of the complete development.



Like the condominium project in Castlewood, then, the property under appeal must be regarded as "residential property containing two (2) or more rental units" within the meaning of the Tennessee Constitution.

Order

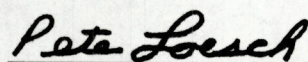
It is, therefore, ORDERED that the subject parcel(s) be subclassified as "industrial and commercial property" and valued in the total amount of \$5,400,000 for the tax years under appeal.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10<sup>th</sup> day of August, 2007.



PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: R. Porter Feild, Attorney, Burch, Porter & Johnson  
Robert T. Lee, General Counsel, Comptroller of Treasury  
Jerry Buckner, Lauderdale County Assessor of Property  
Brian Kinsey, AAS, Supervisor, Jackson Division of Property Assessments